

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1546 of 2002

Allahabad this the 30th day of April, 2014

**Hon'ble Mr. Justice S.S. Tiwari, Member-J
Hon'ble Ms. B. Bhamathi, Member-A**

Sri Chandra Prakash, S/o Late Lalta Prasad, R/o Mohalla-Chhote Quazipur, Gorakhpur (U.P.), working as Senior Section Engineer (Tele), N.E. Railway, Gorakhpur (U.P.).

In person

Applicant

Vs.

1. Sri Ram Charan, Assistant Signal & Telecommunication Engineer, Office of ASTE, N.E. Railway Gonda (near Gonda Rly. Station), District Gonda, U.P.
2. Sri R.S. Nirmal, Assistant Signal & Telecommunication Engineer, Office of ASTE, N.E. Railway, Fatehgarh, District-Fatehgarh, U.P.
3. Sri Shyam Ji Saxena, Assistant Signal & Telecommunication Engineer (Construction), in the office of Dy. CSTE (Construction)/N.E. Railway, (N.E. Rly.) DRM building, Hazratganj, Lucknow, U.P.
4. Sri S.N. Sinha, Assistant Signal & Telecommunication Engineer (Tele)/H.Q./ N.E. Rly. office of CSTE N.E. Railway, P.O. - Rly. Colony, District - Gorakhpur, U.P.
5. Sri B.D. Dixit, Assistant Signal & Telecommunication Engineer (Construction), in the office of Dy. CSTE (construction)/N.E. Railway, (N.E. Rly.) DRM building, Hazratganj, Lucknow, U.P.
6. Sri S.K. Mitra, Assistant Signal & Telecommunication Engineer, N.E. Railway, Barauni (Rly. Station), District - Begusarai, Bihar.
7. Sri S.C. Chawla, Assistant Signal & Telecommunication Engineer, Office of Sr. DSTE, N.E. Railway, Izatnagar, District Bareilley, U.P.
8. Sri D.N. Tiwari, Assistant Signal & Telecommunication Engineer, Office of ASTE, N.E. Railway, Chhapra, District - Chhapra, Bihar.
9. Sri A.K. Mishra, Assistant Signal & Telecommunication Engineer (N.E.R.), through CSTE/N.E. Railway, P.O. - Rly. Colony, District Gorakhpur, U.P.

10. Sri Kapil Dev, Assistant Signal & Telecommunication Engineer (Signal Work shop), Gorakhpur Cantt., N.E. Railway, District-Gorakhpur, U.P.
11. Prahlad Swaroop, (Chairman of ASTE Group 'B' 70% Selection Board) i.e. Chief Signal and Telecommunication Engineer, N.E. Railway, CSTE building, P.O. Rly. Colony, District-Gorakhpur, U.P.
12. P.K. Gupta (Member of ASTE Group 'B' 70% Selection Board) i.e. Chief Personnel Officer, N.E. Railway, CPO building, P.O.-Rly. Colony, District Gorakhpur, U.P.
13. Omkar Singh (Member of ASTE, Group 'B' 70% Selection Board) i.e. Chief Bridge Engineer, N.E. Railway, CEE building, P.O. – Rly. Colony, District-Gorakhpur, U.P.
14. R.K. Sapre (Member of ASTE Group 'B' 70% Selection Board) i.e. Chief Electrical Engineer, N.E. Railway, CEE building, P.O. – Rly. Colony, District – Gorakhpur, U.P.
15. Sri R.N.P. Sinha, Dy. Chief Signal and Telecommunication Engineer (Microwave), N.E. Railway, CSTE building, P.O. – Rly. Colony, District – Gorakhpur.
16. Sri A.S. Iraqui, Divisional Signal and Telecommunication Engineer (Microwave) office of Dy. CSTE (Microwave) N.E. Railway, CSTE building, P.O. – Rly. Colony, District – Gorakhpur.
17. Union of India, through the General Manager, N.E. Railway, Gorakhpur, U.P.
18. The Chairman, Railway Board, New Delhi.
19. The General Manager, N.E. Railway, Gorakhpur, U.P.
20. The General Manager (Personal) N.E. Railway, Gorakhpur, U.P.
21. The General Manager (Signal & Telecom), N.E. Railway, Gorakhpur, U.P.

By Advocate: Shri S.K. Anwar

Respondents

(Reserved on 01st April, 2014)

ORDER

Delivered by Hon'ble Mr. Justice S.S. Tiwari, Member-J

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following relief(s): -

"(8.1) To issue an order or direction commanding the respondents Railway administration N.E. Rly. Gorakhpur to promote the applicant in scale of Rs.7500-12000 as Assistant

[Signature]

Signal & Telecommunication Engineer Group 'B' 70% quota alongwith seniority and all other consequential benefits including fixation of pay, arrears of salary, increments and all other allowances attached with post of ASTE Group 'B' 70% quota as well as other promotional benefits for the post of Divisional Signal & Telecommunication Engineer, if facts and circumstances so required, in comparison with his juniors;

(8.2) To issue an order or direction in the nature of certiorari quashing both the panels which were notified on 12/08/2002 (annexure-1) & 04/09/2002 (annexure-3) by G.M. (P)/N.E. Rly./ Gorakhpur (i.e. respondent No. 20) for the post of Assistant Signal & Telecommunication Engineer Group 'B' (70% quota).

(8.3) To issue an order or direction in the nature of Certiorari accordingly quashing the promotion posting orders, which were notified on 13/08/2002 (vide annexure-2) and 04/09/2002 (vide annexure-4) by G.M. (P)/N.E. Rly./Gorakhpur (i.e. respondent No. 20) for the post of Assistant Signal & Telecommunication Engineer Group 'B' (70% quota)..

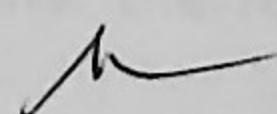
(8.4) To issue an order or direction, directing Rule 204 (1) of Railway Establishment Manual 1989 (1) Edition is Unconstitutional and against Article 14 & 16 of the Constitution of India and may be struck down from the Rules.

(8.5) To issue any other suitable order or direction which may deem just and proper under the circumstances of the present case.

(8.6) To allow the application with cost in favour of the applicant against the respondents."

2. The brief facts giving rise to this O.A. are as follows: -

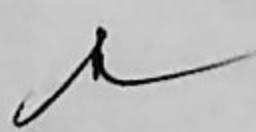
That the applicant applied for the post of Apprentice Assistant Telecommunication Inspector in the year 1970. After selection on the aforesaid post, he joined it on 31.07.1970. After completing two years training, the



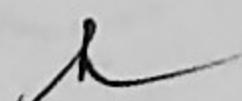
applicant was posted as Assistant Telecommunication Inspector w.e.f. 04.08.1972. This post was re-designated as Telecommunication Inspector Grade III from 01.01.1973 in the Third Pay Commission. The General Manager (P), N.E. Railway, Gorakhpur vide order dated 05.06.2002 published a notification for selection of 14 posts of A.S.T.E. Group 'B' (70% quota) fixing the date of written test as 30.06.2002. In all 51 candidates were called for the examination according to their seniority. The applicant was placed at serial No. 3 as a scheduled caste candidate. The applicant appeared in the written test on 30.06.2002 and out of 51 candidates, only 11 candidates secured qualifying marks (60% and above). In that test, applicant secured 1st position. He also cleared the medical test and also appeared in viva voce test on 09.08.2002 before the Selection Board and he replied all the questions, asked by the Selection Board. The General Manager (P), N.E. Railway published the panel of 9 candidates by order dated 12.08.2002 excluding the name of applicant and respondent No. 10. After 23 days, the General Manager (P), N.E. Railway vide his letter No. E/254/6-2002/ASTE (1) dated 04.09.2002 again published an amended panel in which name of Sri Kapil Dev (respondent No. 10) was included. The Chairman of the Selection Board and other respondents were too much prejudiced with the applicant for not withdrawing three Court cases already pending against the respondents, filed by the

applicant earlier. Due to this prejudice, members of Selection Board under the influence of the Chairman did not select the applicant. The fixation of minimum percentage of marks for passing viva voce test in selection post is illegal and wrong. The applicant according to seniority list and his education and technical qualification was the most suitable candidate to be selected but due to prejudicial approach of the Chairman and Members of the Selection Board he was not selected. Hence, this O.A. was filed for the aforesaid relief(s).

3. The respondents have contested the O.A. and filed the Counter Reply denying the allegations made by applicant, mainly alleging that the applicant could not clear the viva voce test and simply because he had several technical qualifications, there was no obligation on the part of Members of the Selection Board to select him. He was judged on his own merit in the viva voce test. The contention of applicant that the Chairman and the Members of Selection Board were prejudicial to him is wrong and incorrect. The entire selection was conducted in a fair and impartial manner. The Selection Committee comprised of Chief Signal and Telecommunication Engineer whose inclusion in the Selection Committee being a Head of Department is a must. The second member was the Chief Personnel Officer-Head of Department of the Personnel



department invariably nominated as a Member in each selection. The third member was the Chief Bridge Engineer belonging to S.C. community and was nominated as it is a mandatory condition in each selection to nominate a member from SC/ST community with a view to protect the interest of SC/ST candidates. (The applicant claims himself to be a member of SC community.) The fourth member of the Selection Committee was Chief Electrical Engineer who was the Principal Head of Department of Electrical Department. These members were nominated by the General Manager. All the members of Selection Committee were independent and nobody was directly or indirectly subordinate to each other. The allegation of bias, prejudice and malafide against the members of Selection Committee is without any substance. Any member of the Selection Committee had no interest in any OAs filed by the applicant earlier. The applicant has been awarded marks in viva voce test as well as in the record of service on the basis of his performance. The applicant did not raise any objection against the members of Selection Committee before appearing in Viva Voce test at the appropriate stage. Now the allegation of prejudice is an afterthought and legally it cannot be raised by the applicant. The marks were allotted in the selection, in question, as per Railway Board's Circular No. E/GP/88/2/III dated 20.08.1991 circulated vide letter dated 03.09.1991 issued by the office of General Manager (P), N.E. Railway,



Gorakhpur. There was no minimum qualifying marks prescribed for viva voce test separately but out of '50' marks against the head of viva-voce and record of service, 30 marks are allotted as qualifying marks in which at-least 15 marks against the head of record of service are must. The applicant could not secure 30 marks out of 50 marks in record of service plus viva-voce test and thereby he was not found suitable for the promotion. The contention of applicant that the amended panel was published subsequently on the discretion of concerned respondents is also not correct in view of the fact that the result of respondent No. 10 was kept in sealed cover because he was facing DAR case on vigilance advice. Therefore, sealed cover procedure was adopted and after finalization of his DAR proceeding, sealed cover was opened and he was found suitable and accordingly his name was included in the panel. The contention of applicant that there was some change/interpolation/manipulation in his ACR of last five years is also incorrect. Subsequently, he has been shown his ACRs by Order of the Tribunal and no interpolation or manipulation has been found therein. The applicant could not make out a case in his favour and the O.A. deserves to be dismissed.

4. The applicant has filed the Rejoinder Reply mainly reiterating the earlier stands taken by him. Supplementary Rejoinder has also been filed.

5. The respondents have also filed Reply to the Rejoinder as well as Supplementary Rejoinder.
6. In addition to the pleadings, the parties have placed reliance on documentary evidence filed by them on record.
7. Before we enter into the discussion on merits of the O.A., it is worth to mention that the applicant did not appear before the Bench for last several months rather he used to send adjournment applications through post in which a request was also being made that if argument is heard, his written submission filed on record may be considered. Since the case relates to the year 2002 and the applicant was not appearing repeatedly on the last dates, we decided to hear the arguments of learned counsel for the respondents, present before the Bench and we also perused the Written Arguments, already filed by the applicant on record.
8. The first main point raised on behalf of the applicant is that once the respondents approved the panel of nine candidates on 12.08.2002, it could not be amended after a lapse of about 23 days by the same authority. Thus both the panels are totally illegal, wrong and malafide hence liable to be quashed. In reply, learned counsel for the respondents has contended that the respondent No. 10 had already participated in the examination and viva voce test and since he was facing a DAR case on vigilance advice, his result was

not declared along with other candidates rather a sealed cover procedure was adopted and just after finalization of his DAR proceedings sealed cover was opened and he was found suitable, according amended panel was published. The contention of applicant is totally incorrect. Another point raised by the applicant is that he has already put in about 32 years of satisfactory service and to his knowledge there were no adverse remarks in his ACR during this period, he has also got several technical qualifications, he is highly qualified candidate but even then his name has been excluded from the select panel. In this regard, it has been submitted by the respondents' counsel that the educational and technical qualification of the applicant may be there but his over all performance as well as the marks obtained by him in record of service were not found up to the mark and hence he could not get place in the select panel.

9. The third point raised by the applicant is that the fixation of minimum percentage of marks in viva voce test in selection post as per Para-204 (i) of Indian Railway Establishment Manual is illegal and wrong. In reply to this contention, the submission of respondents' counsel is that as per Railway Board letter No. E (GP)/88/2/III dated 20.08.1991 marks are allotted as under in the selection against 70% of ASTE (Group B): -



" II SELECTION

Prescribed papers	Max. Marks	Qualifying Marks	Remarks
One paper on professional subject and Estt. & Financial Rules	150	90	Out of 150 marks the professional subject will carry at least 100 marks

Note: - i) In the case of S & T department, the portion relating to professional subject shall be equally divided between (i) Mechanical, Signaling and line communications and (ii) electrical, signaling and wireless communications as set the instructions contained in Board's letter No. E (GP 79/2/25 dated 4-5-79 and the syllabus circulated there with shall be followed.

Record of Service and Viva-Voce:

(Both for selection and LDCE)

	Max. Marks	Qualifying Marks
i) Viva-Voce	25	30) including atleast
ii) Record of service	25	15 marks in the record of service

The record of service will be evaluated in terms of the instructions contained in Board's letters No. E (G) 2000/2/95 dated 16-1-2001. In this case the marks against heading 'record of service' were computed based on his last 5 years ACR (i.e. 1997-98 to 2001-02)."

On the strength of above facts it is submitted by the respondents' counsel that this contention of applicant is also incorrect.

10. It is also averred by the applicant that the respondents out of malice and prejudice have interpolated and manipulated the confidential reports of the applicant. It is submitted by the respondents' counsel that this contention of applicant is also incorrect as the applicant has already been allowed to inspect the selection proceeding as well as

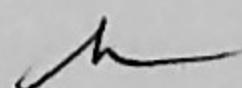
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confidential reports and the Photostat copy of the same records have also been made available to him vide GM (P)/GKP's letter No. E/256/SIG/202/02/Court Case (1) dated 02.05.2011 and letter No. PER/C/1/ASTE/70%/2002/CON dated 26.04.2011 respectively.

11. It has also been submitted by the respondents' counsel that when the procedure for selection post has already been settled much before by the Railway Recruitment Board and it was in the knowledge of applicant, it is not open to the applicant to challenge it now when he has failed in the selection process. Our attention has been drawn towards the observations made by the Hon'ble Apex Court in the case of '**Union of India and another vs. N. Chandrasekharan and others (1998) 3 Supreme Court Cases 694**', in which following has been observed: -

"It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

It has also been contended by the respondents' counsel that once duly constituted selection committee has conducted the examination and viva voce test and finalized the list of successful candidates, it is not open to the Court



to scrutinize it. He has drawn our attention towards the observations made by the Hon'ble Apex Court in the case of '**Dalpat Abasaheb Solunke, etc. vs. Dr. B.S. Mahajan, etc. AIR 1990 Supreme Court 434**' in which it is observed as under: -

"It is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates."

The respondents' counsel has also submitted that it is not open to the applicant to allege that the members of Selection Committee were prejudicial to him or they had any malafide intention or feeling of revenge against the applicant. No specific averment or evidence has been adduced by the applicant in this regard. It is also submitted that some of the respondents of the present O.A. were the respondents in the earlier cases, filed by the applicant, by virtue of their holding office, it cannot be presumed that they are prejudicial to the applicant in the selection process. Reliance has been placed on the case of "**Chandra Prakash Singh and others vs. Chairman, Purvanchal Gramin Bank and others (2009) 1 Supreme Court Cases (L&S) 158**" in which it has been observed as follows: -

"Proposition of law reiterated that plea of mala fide places heavy burden on the party making it. There has to be strong and convincing evidence to establish the plea. Presumption of law is that an act is bona fide act unless such presumption is displaced by a convincing material."

To support the contention of respondents that after participation in the selection process and after not being selected it is not open to the applicant to challenge the selection process, reliance has been placed on the observation made by the Hon'ble Supreme Court in the case of "**Madan Lal vs. State of J&K (1995) 3 SCC 486**", in which it has been observed as follows: -

"... .when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions."

Similar view has been taken by the Hon'ble Apex Court in the case of '**Dhananjay Malik and others vs. State of Uttarakhand and others (2008) 4 Supreme Court Cases 171**' in which it has been observed as follows: -

"9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

The Hon'ble Supreme Court in the aforesaid case has further observed as follows: -

". . if a candidate takes a calculated chance and appears at the interview, then only because the result of the interview is not

palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

Similar view was taken in the case of '**Marripati Nagaraja v. Govt. of A.P. (2007) 11 SCC 522**' in which it has been held ". . .the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process."

Reliance has also been placed by the respondents on the observation made by the Hon'ble Supreme Court in the case of '**Amlan Jyoti Borooh vs. State of Assam and others (2009) 3 Supreme Court Cases 227**' in which it has been observed as follows:

"A candidate who had subjected himself to a faulty selection process could not question it later on. Besides, Supreme Court also not inclined to interfere in exercise of its jurisdiction under Article 136."

12. In view of the above discussions, it is concluded that the O.A. is devoid of merit. Accordingly, O.A. is dismissed. No order as to costs.

B. Bhamathi
(Ms. B. Bhamathi)

Member - A

SS Tiwari
{Justice S.S. Tiwari}
Member-J

/M.M/